

CHAPTER 35

EVERYDAY PROBLEMS IN ADMINISTRATIVE LAW

We will discuss the following series of hypothetical problems. The seminar will examine these problems from both a legal standpoint (what options are available to the commander?) and a practical standpoint (what options are best?).

At the conclusion of the problems, the moderator will distribute a “green sheet” or “school solution.” The solution does not purport to be the only correct solution; instead, it outlines the commander’s legal options. The “best” solution usually is influenced by factors which we can’t reproduce (but which we’ll discuss) in class: command climate, mission requirements, unit concerns, etc.

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DISCUSSION PROBLEM ONE

You are the 250th MP Brigade Commander. The brigade is currently in the middle of a deployment to Iraq. Last Friday afternoon, one of your unit's HMMWV's was involved in a one-vehicle collision while convoying across the city. Unfortunately, the driver of the vehicle, SPC Andretti, was killed. One of the passengers will probably survive, but he lost an eye in the accident. The accident was fairly simple in that Andretti's vehicle was leading the convoy. After rounding a hard right curve, his vehicle swerved to avoid a group of civilians who were crossing the street. The convoy had been traveling 15 miles per hour over the established speed limit in order to avoid IEDs. Finally, despite the injuries to the passengers, the Hummer is in pretty good shape and will only require some minor cosmetic repairs.

Discuss the various investigations that will take place as a result of this incident. In particular, discuss your role in the family presentation that will be given to SPC Andretti's next of kin.

DISCUSSION PROBLEM TWO

After your staff call, CPT Tom Smith (your battalion S-4) informs you that he has an issue he needs to discuss with you. He tells you that one of his soldiers in the S-4 shop, SPC Julie Barnett, just reported that SSG Joe Taylor was harassing her. SSG Taylor is a stellar NCO who works down the hallway in the S-3 shop. According to SPC Barnett, SSG Taylor has been doing things that make her feel uncomfortable. For example, she says SSG Taylor grills her every Monday morning about what she did over the weekend. He asks her if she went out on any dates and if so, who did she go out with and what did they do. He told her several times that she is an “attractive young lady” and once told her that if she ever needed a date to keep him in mind. Last week he sent her an email that said “Saw you coming in with your civies on this morning, Jules. Too bad we don’t have a competition for Best-Looking Soldier of the Quarter!” SPC Barnett says she has been ignoring SSG Taylor and his remarks, but lately he seems to be going out of his way to run into her and talk to her at work, in the dining facility, at the gym, etc. She says she is sick of him, wants him to leave her alone, and wants to be treated professionally like the other soldiers.

Is SPC Barnett required to tell SSG Taylor that his behavior must stop?

What should CPT Smith do?

Assume that after SPC Barnett talks with her company commander and the unit Equal Opportunity Representative, she elects to try to have the problem resolved informally by her company commander (she does not want to file a formal complaint against SSG Taylor at this time). **What, if any, timelines and reporting requirements apply?**

Assume SPC Barnett elects to file a formal EO complaint against SSG Taylor. **What timelines and reporting requirements apply?**

What if the last incident SPC Barnett complains of occurred over 60 days ago? Is she too late to file a formal complaint?

If SPC Barnett’s company commander (not SSG Taylor) was doing these things and making her feel uncomfortable, where would SPC Barnett go to get the problem resolved?

What if SPC Barnett's alleged harasser was not SSG Taylor, but Mr. Taylor, a civilian in the battalion headquarters? Could she file a complaint against Mr. Taylor with the installation Equal Employment Opportunity (EEO) officer?

Now assume that the person reporting the allegations to CPT Smith is not SPC Julie Barnett, but Ms. Julie Barnett, a civilian secretary in the battalion headquarters. **What complaint processes might be available to Ms. Barnett?**

Assume Ms. Barnett elects to file her complaint using the 10 U.S.C. § 1561 procedures. **What timelines and reporting requirements will apply?**

Assume Ms. Barnett elects to file her complaint with the EEO office. **What should the battalion commander do?**